

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

17 On April 1, 2005, Plaintiff Gloria Durante (hereinafter  
18 "Plaintiff" or "Durante") filed a complaint (#2) alleging causes of  
19 action arising under 42 U.S.C. 1981, 42 U.S.C. 1982, Nev. Rev.  
20 Stat. § 651.050, and common law battery and false imprisonment  
21 against Defendants Peppermill and Chittenden; causes of action  
22 arising under N.R.S. 651.050 against Defendant Peppermill alone;  
23 and causes of action arising under 42 U.S.C. 1983 against  
24 Defendants Carranzo and City of Reno. On April 27, 2005, Plaintiff  
25 filed a Motion for Partial Summary Judgment (#8) against Defendant  
26 Carranza, and a separate Motion for Partial Summary Judgment (#9)  
27 against Defendant Peppermill. On July 29, 2005, Defendant Carranza  
28 opposed (#30) the motion (#8) and filed a cross-motion for summary

1 judgment (#31) against Plaintiff. On August 1, 2005, Defendants  
2 Peppermill and Chittenden filed an opposition (#28) to Plaintiff's  
3 motion (#9) and a cross-motion for summary judgment against  
4 Plaintiff (#29). Plaintiff filed a reply (#35) to Chittenden and  
5 Peppermill's opposition (#28) on August 25, 2005, and a reply (#34)  
6 to Carranza's opposition (#30) on August 26, 2005. Plaintiff also  
7 filed an "Opposition re Cross Motion for Summary Judgment" (#36) on  
8 August 25, 2005. Plaintiff does not specify which cross-motion #36  
9 opposes, but it appears to be Peppermill's (#29) as Plaintiff filed  
10 an opposition (#66) under seal to Carranza's motion (#31) on  
11 December 23, 2005. After obtaining leave for an extension of time,  
12 Defendant Carranza filed a reply (#70) on January 18, 2006.

13 The motions being ripe, we address them herein. For the  
14 reasons stated below, Plaintiff's motions (##8, 9) will be **DENIED**.  
15 Defendants Peppermill and Chittenden's motion (#29) will be **DENIED**,  
16 and Defendant Carranza's motion (#31) will be **GRANTED** as to a  
17 finding of qualified immunity.

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19  
20 **I. FACTUAL HISTORY**

21 In the early morning hours of September 7, 2003, Ms. Durante  
22 was arrested for trespassing while attempting to play the slot  
23 machines at the Peppermill Casino. She was a registered guest of  
24 the Peppermill hotel, where she had been staying since September 1,  
25 2003. Many of the events of that morning are disputed by the  
26 parties.

1 Ms. Durante claims that she had become light-headed after  
2 taking her heart medication, which caused her to fall down at one  
3 point while walking in the casino. (Pl. Mot ## 8, 9, Durante Dec.  
4 at 1-2.) After her fall, she returned to a slot machine, where she  
5 played until Defendant Chittenden summarily told her "you can't  
6 play anymore." (Id. at 2.) Ms. Durante claims that she responded  
7 that he must be kidding and Mr. Chittenden told her "get out of the  
8 hotel." (Id.) When she refused, she claims he forcefully grabbed  
9 her from behind to handcuff her and dragged her to another part of  
10 the casino, where she was ultimately arrested for trespassing by  
11 Defendant Carranza. (Id. at 2-3.) Ms. Durante claims she  
12 explained to both Chittenden and Carranza that she was a registered  
13 guest of the hotel and that she was a heart patient, and that  
14 neither investigated these issues further. (Id. at 3.)

15 Defendants claim that Ms. Durante was drunk and disruptive,  
16 had been asked to leave several times, and had been offered a  
17 wheelchair before she was arrested for trespassing. (Def. Mot.  
18 #29, Ex. E.) They present video evidence of Ms. Durante slumped in  
19 her chair, falling from her chair while sitting and to the ground  
20 while walking, and otherwise appearing intoxicated over a period of  
21 four hours. The video also shows Defendant Chittenden approaching  
22 her several times, one of which was with a wheelchair. It shows a  
23 female security guard ultimately handcuffing Ms. Durante and  
24 leading her away with Mr. Chittenden. Defendant Police Officer  
25 Carranza states that he based his decision to arrest on information  
26 obtained from security staff with whom he had prior experience,

1 their prepared statements, and his observations of Ms. Durante.  
2 (Def. Mot. #31, Ex. A.)  
3

4 **II. DISCUSSION**

5 **A. Summary Judgment Standard**

6 Summary judgment allows courts to avoid unnecessary trials  
7 where no material factual dispute exists. Northwest Motorcycle  
8 Ass'n v. U.S. Dept. of Agriculture, 18 F.3d 1468, 1471 (9th Cir.  
9 1994). The court must view the evidence and the inferences arising  
10 therefrom "in the light most favorable to the nonmoving party,"  
11 Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996), and should  
12 award summary judgment where no genuine issues of material fact  
13 remain in dispute and the moving party is entitled to judgment as a  
14 matter of law. Fed. R. Civ. P. 56(c). Judgment as a matter of law  
15 is appropriate where there is no legally sufficient evidentiary  
16 basis for a reasonable jury to find for the nonmoving party. Fed.  
17 R. Civ. P. 50(a).

18 The moving party bears the burden of informing the court of  
19 the basis for its motion, together with evidence demonstrating the  
20 absence of any genuine issue of material fact. Celotex Corp. v.  
21 Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met  
22 its burden, the party opposing the motion may not rest upon mere  
23 allegations or denials in the pleadings, but must set forth  
24 specific facts showing that there exists a genuine issue for trial.  
25 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).  
26 Although the parties may submit evidence in an inadmissible form--  
27 namely, depositions, admissions, interrogatory answers, and

1 affidavits--only evidence which might be admissible at trial may be  
2 considered by a trial court in ruling on a motion for summary  
3 judgment. Fed. R. Civ. P. 56(c); Beyene v. Coleman Security  
4 Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

5 In deciding whether to grant summary judgment, a court must  
6 take three necessary steps: (1) it must determine whether a fact is  
7 material; (2) it must determine whether there exists a genuine  
8 issue for the trier of fact, as determined by the documents  
9 submitted to the court; and (3) it must consider that evidence in  
10 light of the appropriate standard of proof. Anderson, 477 U.S. at  
11 248. Summary Judgment is not proper if material factual issues  
12 exist for trial. B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260,  
13 1264 (9th Cir. 1999). "As to materiality, only disputes over facts  
14 that might affect the outcome of the suit under the governing law  
15 will properly preclude the entry of summary judgment." Anderson,  
16 477 U.S. at 248. Disputes over irrelevant or unnecessary facts  
17 should not be considered. Id. Where there is a complete failure  
18 of proof on an essential element of the nonmoving party's case, all  
19 other facts become immaterial, and the moving party is entitled to  
20 judgment as a matter of law. Celotex, 477 U.S. at 323. Summary  
21 judgment is not a disfavored procedural shortcut, but rather an  
22 integral part of the federal rules as a whole. Id.

23 The Ninth Circuit "requires the non-moving party to produce  
24 'very little evidence' to overcome a motion for summary judgment in  
25 a discrimination case because 'the ultimate question is one that  
26 can only be resolved through a searching inquiry - one that is most  
27 appropriately conducted by a factfinder, upon a full record.'"

1 Lindsey v. SLT Los Angeles, LLC, - F.3d -, WL 3470286, at 3 (9th  
2 Cir. 2005) (citations omitted).

3

4 **B. Motions Regarding Defendants Peppermill and Chittenden**

5 **1. 1981 claims**

6 The Ninth Circuit has recently addressed the standard for  
7 assessing when an entities actions violate section 1981.<sup>1</sup> Id. The  
8 court in Lindsey adapted the McDonnell-Douglas balance-shifting

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10 <sup>1</sup>42 U.S.C. section 1981(a) provides

11

12 All persons within the jurisdiction of the United States  
13 shall have the same right in every State and Territory  
14 to make and enforce contracts, to sue, be parties, give  
15 evidence, and to the full and equal benefit of all laws  
16 and proceedings for the security of persons and property  
17 as is enjoyed by white citizens.

18 Section 1981(b) defines "make and enforce contracts" as  
19 including "the making, performance, modification, and termination  
20 of contracts, and the enjoyment of all benefits, privileges, terms,  
21 and conditions of the contractual relationship." Plaintiff's  
22 complaint alleges that she was denied the benefits of an implied  
23 contract for services with the Peppermill. We note that the  
24 relationship between a gambler and her casino is not as clearly  
25 contractual as many others previously tackled by the Federal  
26 courts. However, Defendants do not challenge Plaintiff's 1981  
27 claims on that basis, and so we proceed on the assumption that a  
28 contractual relationship existed between Plaintiff and Defendants.

1 inquiry for employment discrimination suits to the realm of  
2 discrimination in services-contracting as follows:

3       First, a plaintiff must demonstrate a *prima facie* case of  
4 discrimination by showing that: "(1) it is a member of a protected  
5 class, (2) it attempted to contract for certain services, and (3)  
6 it was denied the right to contract for those services . . . [and  
7 (4)] that such services remained available to similarly-situated  
8 individuals who were not members of the plaintiff's protected  
9 class." Id. at 4. In addition, the court left open the  
10 possibility that in cases where evidence of how similarly-situated  
11 individuals were treated is not available, courts may wish to  
12 tailor the fourth element to more directly suit the needs of  
13 services-contracting cases by allowing for a showing that  
14 "plaintiff received services in a markedly hostile manner and in a  
15 manner which a reasonable person would find objectively  
16 discriminatory." Id.

17       Once a plaintiff has established a *prima facie* case, then the  
18 burden shifts to the defendant to produce evidence of a legitimate  
19 non-discriminatory reason for denying services to the plaintiff.  
20 Id. at 6. If the defendant produces evidence of a legitimate non-  
21 discriminatory reason, then "the presumption of discrimination  
22 'drops out of the picture,' and the plaintiff has the new burden of  
23 proving that the proffered reasons were a pretext for  
24 discrimination. Id. at 7 (citations omitted). "A plaintiff can  
25 prove pretext in two ways: (1) indirectly, by showing that the  
26 employer's proffered explanation is 'unworthy of credence' because  
27 it is internally inconsistent or otherwise not believable, or (2)

1 directly, by showing that unlawful discrimination more likely  
2 motivated the employer." Id. (citations omitted).  
3

4 **a. 1981 analysis**

5 \_\_\_\_\_ We now apply the facts at hand to the tests outlined above.  
6 First, it is undisputed that Ms. Durante is a member of the  
7 protected class of African-Americans. Second, she attempted to  
8 utilize the services the Peppermill held out to the public, in this  
9 case, gambling on the slot machines in the casino.

10 However, there appears to be some dispute as to the third  
11 element: whether Ms. Durante was denied the right to contract for  
12 services. While it is undisputed that Ms. Durante wanted to keep  
13 gambling in the casino and that Defendants refused her access,  
14 there appears to be a genuine issue of fact as to whether Ms.  
15 Durante was denied the right to contract for services in terms  
16 mutually acceptable to both parties. A jury could find that  
17 Defendants' requirements that their patrons be able to walk and sit  
18 up without falling and otherwise safely use their services are  
19 legitimate contract terms. If such terms are indeed legitimate and  
20 Ms. Durante was unable or refused to meet those terms, then her  
21 inability to meet the terms is what terminated the contractual  
22 relationship, not Defendants' actions.

23 Because we find that, when the facts are taken in the light  
24 most favorable to Defendants, a genuine issue of material fact  
25 exists as to Plaintiff's *prima facie* case, we need not pursue the  
26 inquiry further in relation to Plaintiff's motion for summary  
27 judgment. We, therefore, find that Plaintiff has not established  
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1 by matter of law that she was discriminated against in violation of  
2 section 1981.

3       However, in order to address Defendants Peppermill and  
4 Chittenden's motion, we must also consider the facts in the light  
5 most favorable to Plaintiff. From that perspective, Plaintiff's  
6 claims survive the elements for a *prima facie* case. In addition to  
7 the first two elements discussed above, from the view of Plaintiff,  
8 a jury could find that she was denied the right to contract for  
9 services, as there was no express or implied contract term that she  
10 remain upright while gambling. Furthermore, Plaintiff has  
11 presented some evidence of white "tester" guests creating similar  
12 nuisances and not being arrested for trespass. In addition,  
13 Plaintiff claims that the manner in which she was asked to leave  
14 and then arrested was markedly hostile. Because differing minds  
15 could reach distinct conclusions in examining the evidence  
16 proffered by both parties as to the treatment of Ms. Durante and  
17 white guests at the hotel, we find that this fourth element  
18 presents the kinds of factual issues best resolved by a jury. See  
19 Id. at 5, 11.

20       Because we have found that Plaintiff has established enough of  
21 a *prima facie* case of discrimination to survive summary judgment,  
22 the burden shifts to Defendants to offer a legitimate non-  
23 discriminatory reason for denying Ms. Durante the continued use of  
24 the casino. Defendants have satisfied their burden by presenting  
25 evidence that Ms. Durante was disruptive to the casino by sleeping,  
26 falling off her chair, falling down while walking, responding  
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1 belligerently to casino staff, and refusing the assistance of a  
2 wheelchair to safely exit the casino.

3 Because Defendants have satisfied their burden, Plaintiff must  
4 at least present an issue of fact that Defendants' proffered  
5 legitimate non-discriminatory reasons are a pretext for  
6 discrimination. Plaintiff has not presented any direct evidence of  
7 discrimination or discriminatory intent. However, a plaintiff may  
8 prove pretext indirectly by demonstrating that the defendants'  
9 proffered legitimate reasons are not credible. Id. at 7.

10 Defendants claim that Plaintiff was obviously drunk,  
11 belligerent, and a danger to herself and others. In support of  
12 their claim, they offer 4 hours of video surveillance showing Ms.  
13 Durante sleeping at the slot machines, falling from her chair,  
14 falling while walking, and refusing the use of a wheelchair. In  
15 turn, Ms. Durante claims that she was not drunk, that she was on  
16 medication for a heart condition which caused her to be light-  
17 headed and have fainting spells, that Defendants had possession of  
18 her medication and knowledge of her condition, and that Defendants  
19 had no proof that she was intoxicated.

20 In examining the video, it is very difficult to find that  
21 Defendant's proffered non-discriminatory reasons are not credible.  
22 True, Ms. Durante does not appear to be directly upsetting other  
23 guests, but she is clearly unable to take care of herself without  
24 falling down. In addition, the video shows Defendants' staff  
25 offering a wheelchair, which indicates concern for Ms. Durante's  
26 condition and an attempt to safely remove her without resorting to  
27 arrest. While Ms. Durante's evidence that she is a heart patient

1 may rebut Defendants' claims that she was drunk and belligerent, it  
 2 does not rebut their claim that she was a danger to herself and  
 3 others on the casino floor. Still, Ms. Durante's pointing to  
 4 Defendants' lack of concrete evidence that Ms. Durante was  
 5 intoxicated from alcohol, and her evidence of a known medical  
 6 reason for her wobbliness, appears to raise just enough of a  
 7 factual issue regarding credibility to require a jury's  
 8 consideration of the evidence and ultimate determination of  
 9 discriminatory intent.<sup>2</sup>

10

11 **2. Section 1982 claims**

12 42 U.S.C. 1982 provides that all citizens shall have the same  
 13 rights "to inherit, purchase, lease, sell, hold, and convey real  
 14 and personal property." While section 1982 rights generally attach  
 15 to property rights such as housing, at least one circuit court has  
 16 applied the statute to the rights of invited guests to a private  
 17 pool to "go and come at pleasure." Olzman v. Lake Hills Swim Club, Inc., 495 F.2d 1333 (2nd Cir. 1974). In addition, section 1982  
 18 rights have been found to attach to commercial establishments  
 19 located within a hotel. See Pinkney v. Meloy, 241 F. Supp. 943,  
 20 947 (D.C. Fla. 1965) (barber shop in hotel covered where the shop  
 21 holds itself out to serve hotel guests). Because "narrow  
 22 construction of the language of section 1982 would be quite  
 23 inconsistent with the broad and sweeping nature of the protection

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<sup>2</sup>As Plaintiff provided enough evidence in her original motion and responses to survive summary judgment, we need not address her supplemental briefing, which was not submitted within the timeframe provided for in the rules.

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1 meant to be afforded by . . . the Civil Rights Act . . . from  
 2 which [it] was derived," we find that the Peppermill casino is  
 3 covered under section 1982. Sullivan v. Little Hunting Park Inc.,  
 4 396 U.S. 229, 237 (1969).

5 The Ninth Circuit, as well as several others, has applied the  
 6 McDonnell-Douglas burden-shifting test to discrimination claims  
 7 arising under section 1982. Phiffer v. Proud Parrot Motor Hotel,  
 8 Inc., 648 F.2d 548, 551 (9th Cir. 1980); see, also, e.g., Asbury v.  
 9 Brougham, 866 F.2d 1276, 1279-80 (10th Cir. 1989); Selden  
 10 Apartments v. U.S. Dept. of H.U.D., 785 F.2d 152, 159-60 (6th Cir.  
 11 1986). Therefore, our analysis conducted and conclusions reached  
 12 regarding section 1981 applies to Defendant Peppermill's motion  
 13 regarding section 1982, and we find that an issue of fact exists  
 14 for Plaintiff's 1982 claims.<sup>3</sup>

15

16 **3. Nev. Rev. Stat. § 651.050 et seq.**

17 Plaintiff requests injunctive and compensatory relief for  
 18 alleged violation of her rights under Nev. Rev. Stat. section  
 19 651.050 et seq. Nev. Rev. Stat. section 651.070 provides that  
 20 "[a]ll persons are entitled to the full and equal enjoyment of the  
 21 goods, services, facilities, privileges, advantages and  
 22 accommodations of any place of public accommodation, without  
 23 discrimination or segregation on the ground of race, color,  
 24 religion, national origin or disability."

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26 <sup>3</sup>Plaintiff did not request summary judgment on the section 1982  
 27 claims, and so we do not reach a conclusion from that particular  
 factual perspective.

1       As discussed above, Plaintiff has raised a genuine issue of  
 2 material fact that she was denied equal enjoyment of services in a  
 3 place of public accommodation, and therefore this claim survives  
 4 Defendants' motion for summary judgment.<sup>4</sup>,<sup>5</sup>

5

6 **4. False Imprisonment**

7       To establish a claim of false imprisonment, Plaintiff must  
 8 prove that she was "restrained of h[er] liberty under the probable  
 9 imminence of force without any legal cause or justification."  
 10 Hernandez v. Reno, 634 P.2d 668, 671 (Nev. 1981). Nev. Rev. Stat.  
 11 section 651.020 provides that "[e]very owner or keeper of any hotel,  
 12 inn, motel, motor court, or boardinghouse or lodginghouse in this  
 13 state shall have the right to evict from such premises anyone who  
 14 acts in a disorderly manner, or who destroys the property of any  
 15 such owner or keeper, or who causes a public disturbance in or upon  
 16 such premises."<sup>6</sup> Reno Municipal Code section 8.10.010, under which  
 17 Ms. Durante was arrested, provides in relevant part:

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19       <sup>4</sup>We note that Plaintiff has requested both injunctive and  
 20 compensatory damages under Nev. Rev. Stat section 651.050 et seq. If  
 21 such a violation is ultimately determined, Nev. Rev. Stat. section  
 22 651.050 requires the demonstration of actual monetary injury in order  
 23 to receive compensatory damages. Long v. Coast Resorts, Inc., 267  
 24 F.3d 918, 925 (9th Cir. 2001).

25       <sup>5</sup>We note further that the Complaint's references to intimidation,  
 26 threats, punishment, etc., appear to be inapplicable to Plaintiff's  
 27 civil rights claims. Nev. Rev. Stat. section 651.080, the only  
 28 section that references threats, intimidation, punishment, etc.,  
 provides for criminal penalties and not civil remedies.

29       <sup>6</sup>We note that there is some uncertainty as to whether Nev. Rev.  
 30 Stat. 651.080 applies to a casino attached to a hotel. Because  
 31 Defendants Peppermill and Chittenden did not raise this issue, we will  
 32 not address it here.

33

Every person who . . . willfully goes or remains upon any land or in any building after having been warned by the owner or occupant thereof not to trespass is guilty of a misdemeanor. If the premises were at the time open to the public, the warning must have been given within the previous six months.

5 The Nevada Supreme Court has found a casino patron to be properly  
6 identified as a trespasser when, after being found slumped in his  
7 chair, he was asked to leave by security and he refused to do so.  
8 Billingsly v. Stockmen's Hotel, Inc., 901 P.2d 141, 145 (Nev.  
9 1995).

10 We find that the inquiry into whether or not Plaintiff's  
11 actions were disorderly or disturbing to the public, as presented  
12 by Nev. Rev. Stat. section 651.020, would present a question of  
13 fact best assessed by a jury. Although the undisputed actions of  
14 Plaintiff include being slumped in a chair and refusing to leave,  
15 there is some dispute as to how often and when she was asked to  
16 leave and whether she was asked to leave the hotel, which would  
17 more clearly fall under 651.020, or just the casino, which may not.  
18 Thus, there appears to be enough of factual dispute regarding the  
19 circumstances to send the false imprisonment claim to the jury.

## 5. Battery

23 "To establish a battery claim, a plaintiff must show that the  
24 actor (1) intended to cause harmful or offensive contact, and (2)  
25 such contact did occur." Switzer v. Rivera, 174 F. Supp. 2d 1097,  
26 1109 (D. Nev. 2001). In order to sustain a battery claim against a  
27 security guard, some courts have held that a detained customer must

1 demonstrate unreasonable force or a threat of physical harm, or a  
2 well-founded fear of imminent harm. See Kmart Corp. v. Perdue, 708  
3 So. 2d 106, 111 (Ala. 1997); Whitlow v. Bruno's Inc., 567 So. 2d.  
4 1235, 1239-40 (Ala. 1990). Whether or not the actions of a  
5 security guard in detaining a customer constitutes a battery is  
6 generally a question of fact. Burwell v. Giant Genie Corp., 446  
7 S.E. 2d 126, 128 (N.C. App. 1994).

9 Here Defendants' surveillance video provides strong evidence  
10 that Defendants did not use unreasonable force while detaining  
11 Plaintiff. However, Plaintiff claims that she was grabbed  
12 forcefully and feared imminent harm. It is certainly conceivable  
13 that some actions could have occurred outside the purview of the  
14 surveillance cameras, once Defendants moved Plaintiff away from  
15 them. Thus, there appears to be a genuine issue of fact as to  
16 Plaintiff's battery claim.

17

18 **C. Motions Regarding Defendant Reno Police Officer Carranza**

20 Plaintiff and Defendant Carranza each filed motions seeking  
21 rulings on summary judgment regarding Carranza's liability for the  
22 allegedly unlawful arrest of Plaintiff. Plaintiff argues that the  
23 arrest was conducted without probable cause in violation of the  
24 Fourth Amendment. Carranza disagrees, and asserts that he has  
25 qualified immunity from section 1983 claims.

26

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28

1       It is not clear as to which specific issues Defendant Carranza  
2 is seeking summary judgment. Because he directs his entire  
3 argument to refuting Plaintiff's summary judgment claim regarding  
4 an arrest without probable cause in violation of the Fourth  
5 Amendment and his qualified immunity therefrom, we will treat his  
6 cross-motion for summary judgment as only pertaining to the issue  
7 of his qualified immunity from the Fourth Amendment claim regarding  
8 arrest without probable cause.

10

11 **1. Qualified Immunity.**

12       The Supreme Court has counseled that "a ruling on [summary  
13 judgement] should be made early in the proceedings so that the  
14 costs and expenses of trial are avoided where the defense is  
15 dispositive." Saucier v. Katz, 533 U.S. 194, 200 (2001).  
16 Qualified immunity involves "immunity from suit rather than a mere  
17 defense to liability." Id. (quoting Mitchell v. Forsyth, 472 U.S.  
18 511, 526 (1985)). Thus, "like absolute immunity, [qualified  
19 immunity] is effectively lost if a case is erroneously permitted to  
20 go to trial." Saucier, 533 U.S. at 200-01 (emphasis in original).

22

Under Saucier v. Katz, a court must answer two questions.

23

First, as a threshold matter, the court must ask: "Taken in the  
24 light most favorable to the party asserting the injury, do the  
25 facts alleged show the officer's conduct violated a constitutional  
26 right?" Id. at 201.

27

28

1       Second, Saucier directs that the court inquire into whether  
2 the constitutional right alleged to have been violated was clearly  
3 established. 533 U.S. at 201. Under this second step, the  
4 relevant inquiry "is whether it would be clear to a reasonable  
5 officer that his conduct was unlawful in the situation he  
6 confronted." Id. Thus, an officer can receive qualified immunity  
7 for reasonable mistakes as to the legality of her actions. See id.  
8 at 206. "[I]n the light of pre-existing law, the unlawfulness must  
9 be apparent." Anderson v. Creighton, 483 U.S. 635, 640 (1987). In  
10 this way, qualified immunity acts to ensure that officers are on  
11 notice that their conduct is unlawful before they are subjected to  
12 suit. Id.

14

15 **a. Has Plaintiff Shown a Violation of her Fourth Amendment Rights?**

16       Plaintiff's Complaint alleges that her Fourth Amendment rights  
17 were violated because Defendant Carranza arrested her for  
18 trespassing without probable cause.

19       "'[I]n order to satisfy the requirements of the Fourth  
20 Amendment,' a warrantless misdemeanor arrest 'must be supported by  
21 probable cause to believe that the arrestee has committed a crime."  
22 Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 924 (9th  
23 Cir. 2001) (citation omitted). "Probable cause exists when, at the  
24 time of arrest, the agents know reasonably trustworthy information  
25 sufficient to warrant a prudent person in believing that the  
26

27

1 accused had committed or was committing an offense." Id. 924-25.  
2 The fact-finder reviews the "totality of the circumstances" in  
3 determining probable cause. Illinois v. Gates, 462 U.S. 213, 238  
4 (1983). Claims alleging that an arresting officer, who had not  
5 himself witnessed the alleged offense, did not independently  
6 investigate a citizen's complaint, did not inform the arrestee as  
7 to why she was being arrested, and did not allow the arrestee to  
8 explain her side of the story, were found to be sufficient to  
9 survive a motion to dismiss in Arpin. 261 F.3d at 925.

10  
11 Here, Plaintiff claims that Officer Carranza took the  
12 allegations of the Peppermill staff at face value and conducted no  
13 independent investigation of her status as a registered guest and  
14 her medical condition prior to arresting her. Officer Carranza  
15 argues that many indicia of reliability supported his determination  
16 of probable cause to arrest Ms. Durante, including his prior  
17 experience with Peppermill staff, witness statements, and his own  
18 observations of Ms. Durante. Because a totality of the  
19 circumstances determination is necessarily a fact-based  
20 determination, and because some of the relevant facts here are in  
21 dispute,<sup>7</sup> we find that genuine issues of material fact exist as to  
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<sup>7</sup> Ms. Durante's status as a guest and her medical condition may  
26 not be entirely relevant to the allegations that she was a trespasser,  
27 as the trespassing statute appears to simply require verbal warnings  
to be given and ignored. However, we need not reach that conclusion  
at this stage, as the ultimate question of qualified immunity inquiry  
is more easily resolved in the second prong, as discussed below.

1 the existence of an underlying constitutional violation for both  
 2 motions.

3

4 **b. Was the Constitutional Right Allegedly Violated by Officer  
 5 Carranza Clearly Established?**

6 For a right to be clearly established, its contours "must be  
 7 sufficiently clear that a reasonable official would understand that  
 8 what he is doing violates the right." Saucier, 533 U.S. at 201.  
 9 "Because the focus is on whether the officer had fair notice that  
 10 her conduct was unlawful, reasonableness is judged against the  
 11 backdrop of the law at the time of the conduct." Brosseau, 543  
 12 U.S. 194, 125 S. Ct. 596, 599 (2004). "If the law at the time did  
 13 not clearly establish that the officer's conduct would violate the  
 14 Constitution, the officer should not be subject to liability or,  
 15 indeed, even the burdens of litigation." Id. In addition, the  
 16 inquiry into whether the particular constitutional right was  
 17 clearly established must be undertaken "in light of the specific  
 18 context of the case, not as a broad general proposition." Saucier,  
 19 533 U.S. at 201. Thus, we must determine whether Officer Carranza  
 20 could reasonably have known that the information available to and  
 21 actions taken by him could not have provided sufficient probable  
 22 cause for Plaintiff's arrest.

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24 As discussed above, Arpin held that police officers must base  
 25 probable cause on sufficiently trustworthy information. 261 F.3d at  
 26 924-25. In cases where the officer did not witness the crime, he  
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1 must conduct some independent investigation of a citizen witness's  
2 claims in order to support a misdemeanor arrest. Id. at 925.  
3 Officer Carranza claims that he did adequately investigate by  
4 talking to security staff, obtaining statements, and observing Ms.  
5 Durante. While Plaintiff's affidavit states that Carranza did not  
6 investigate whether she was a registered guest, she does not  
7 indicate any failure to investigate the allegations more clearly  
8 relevant to the trespass offense, namely that she was a  
9 disturbance, had been asked to leave, and refused to do so.  
10 Furthermore, unlike the Plaintiff in Arpin, a case which examined  
11 only the pleadings and not other evidence, Ms. Durante states in  
12 her affidavit that she "explained to Carranza" her side of the  
13 story. (Pl. Mot. #8, Durante Dec. at 3.) Thus, even when the facts  
14 are taken in the light most favorable to Plaintiff, it would not  
15 have been clear to a reasonable officer that his questioning of  
16 witnesses with whom he had prior experience, his taking statements,  
17 and his observing Ms. Durante, would not have been sufficient  
18 investigation to establish trustworthy information supporting  
19 probable cause.

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IT IS, THEREFORE, HEREBY ORDERED that, as addressed above, Plaintiff's Motions for Summary Judgment (## 8, 9) are DENIED.

**IT IS, FURTHER, HEREBY ORDERED** that, as addressed above, Defendants Peppermill and Chittenden's Motion for Summary Judgment (#29) is **DENIED**.

**IT IS, FURTHER, HEREBY ORDERED** that, as addressed above, Defendant Carranza's Motion for Summary Judgment (#31) is **GRANTED** as to a finding that he has qualified immunity from the Fourth Amendment claims alleged against him.

DATED: This 24<sup>th</sup> day of January, 2006.

Edward C. Reed.  
UNITED STATES DISTRICT JUDGE